

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KYLE THOMAS FACCHIN,

Plaintiff,

v.

SEAN KELLY, *et al.*,

Defendants.

Case No. 1:21-cv-00289-ADA-CDB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
COMPLAINT FOR FAILURE TO STATE A  
CLAIM

(ECF No. 14)

Clerk of Court to close the case.

Plaintiff Kyle Thomas Facchin (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action misfiled under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 7, 2022, the assigned Magistrate Judge screened Plaintiff’s complaint that alleges that Defendant Sean Kelley subjected him to excessive force and unknown officers failed to protect him, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. (ECF No. 14.) The Magistrate Judge found that the complaint fails to state a claim upon which relief may be granted and must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii) and 28 U.S.C. § 1915A(b)(1). (*See id.* at 11.) He further found that the deficiencies in the complaint cannot be cured by amendment and therefore recommended dismissal of this action without leave to amend.

1 The assigned Magistrate Judge advised that Plaintiff could file written objections to the  
2 findings and recommendations within fourteen days. (*Id.*) Plaintiff did not file objections, and the  
3 time to do so has passed.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
5 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings  
6 and recommendations to be supported by the record and proper analysis.

7 Accordingly,

- 8 1. The findings and recommendations issued on December 7, 2022, (ECF No. 14), are  
9 adopted in full;
- 10 2. This action is DISMISSED for failure to state a claim upon which relief can be  
11 granted; and
- 12 3. The Clerk of Court is directed to terminate all pending motions and to close this  
13 case.

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16 IT IS SO ORDERED.

17 Dated: March 27, 2023

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UNITED STATES DISTRICT JUDGE